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No. 90-9-1662

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

On Behalf of CHRISTOPHER BAIRSTOW, a minor

FRED BAIRSTOW Petitioner

vs

CAROLYN BAIRSTOW Respondent

TO OPPOSE PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF THE SECOND DISTRICT
OF THE STATE OF ILLINOIS

ANSWER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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(1) Allen v Wright, 104 S. Ct. 3315, 468 U. S. 737, 82 L. Ed. 2d 556 (1984)

This case is discussed at length on pp. 6, 7 and 8 of this Answering Brief. Had Fred really read this case he would never have filed his Petition for a Writ of Certiorari.. 18

(2) Clark v Chicago Title and Trust Company, 393 Ill. 419, 66 N. E. 2d 378 (1949)

In the Clark case the person representing the minors was recognized by the Court as the childrens' "next friend". In the case at bar Fred never achieved that status.. 19

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(3) Kriebiozen Research Foundation v Beacon Press
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This case is totally irrelevant. Fred is not a newspaper and the case at bar is not a public medium for the discussion of drugs. . . .19

(4) Washington v Harper,
_____ U.S. _____,
110 S. Ct. 1028
108 L. Ed. 2d 178 (1990)

This case, although cited by Fred, supports Carolyn 's position. Did Fred really read this case?. 19

VII. CONCLUSION. 20

ANSWER OF CAROLYN BAIRSTOW TO PETITION FOR WRIT OF CERTIORARI

The opinion of the Appellate Court for the Second District of Illinois sets forth with great clarity the history of the facts of the case and the law applicable.

There are a number of errors, misstatements and omissions in the Petition for a Writ of Certiorari to which reference will be made and clarification provided hereafter.

I.

FRED BAIRSTOW HAS NO STANDING

There is only one issue in this case: does Fred Bairstow (hereinafter called Fred) have standing to seek an injunction against a mother, who has sole custody of the minor son, to prevent her from administering Ritalin to her son under the direction of a duly qualified and licensed physician for the

treatment of her son's malady?

No discussion of the merits can be reached until the question of standing is resolved for that controls the threshold to the lawsuit for the injunction and is the basis for the issuance of the Order of Protection.

The Supreme Court of Illinois has stated, in In Re Marriage of Rodriguez, 131 Ill.2d 273, 545 N. E. 2d 31, 137 Ill. Dec. 78 at page 81 (1989):

> "The purpose of the doctrine of standing is to insure that courts are deciding actual, specific controversies, and not abstract questions or moot issues... The primary focus of standing is that a party have a real interest in the action and in its outcome."
>
> "This Court has defined standing as requiring 'some injury in fact to a legally recognized interest'... In deciding whether a party has standing, a court must look at the party to see if he or she will be benefitted by the relief granted...Standing is a component of justiciability, and therefore must be defined on a case-by-case basis." (Underscoring supplied).

The Appellate Court of Illinois has defined "standing" in the case of Lynch v Devine, 45 Ill. App. 3d 743, 359 N. E. 2d 1137, 4 Ill. Dec. 185 at page 188 (1977) as follows:

> "The doctrine of standing, simply stated, requires that a party, seeking relief from the courts, must allege some injury in fact to some substantive, legally-protected interest of his, which is a right or interest either recognized by common law or created by statute... The doctrine is used to insure that the courts are available to decide actual, specific controversies between the parties and are not overwhelmed in the mire of abstract questions, moot issues or cases brought on behalf of other parties who do not desire judicial aid." (Underscoring supplied).

What "real interest" does Fred have in the administration of Ritalin to his nephew by a qualified medical doctor that would justify permitting him to enjoin the mother, as sole custodian, from giving her son Ritalin under a qualified doctor's direction?

The facts are:

1. Fred does NOT have custody of the child.

2. Fred is NOT a parent of the child.

3. Fred is NOT a guardian of the child.

4. Fred has NO obligation to support the child, to educate the child or to care for the health of the child.

5. Fred is NOT a part of any governmental agency qualified to inquire into the health treatment of a child.

6. Fred is NOT a medical doctor nor has he been licensed to practice medicine in the State of Illinois.

7. Fred has NEVER been given any legal standing by a court to act as "next friend", and no such court order has ever been entered.

Fred, an uncle to the child, states that he secures his "standing" from the fact that he loves his nephew. (C-51). In the eyes of the law that is not enough.

On page 4 of his Petition for a Writ of Certiorari herein Fred states:

> "he filed a petition seeking next friend status and an injunction against the administration of Ritalin."

That is not what Fred said on page 4 of his Appellant's Brief to the Second District Appellate Court of Illinois:

> "Fred Bairstow has asked the Court in a memorandum filed before the first hearing for Next Friend status to bring this action. (R-C5). During the hearing Fred Bairstow was prepared not to proceed with testimony and arguments if the judge had not granted him authority to do so. Fred asked the court for procedural status to bring this cause at the very beginning of the hearing.(R-81). After Fred asked for status he paused and waited for the judge to give him permission to proceed. (R C81). It was only after the judge responded affirmatively that Fred proceeded (R-C81)."

The is absolutely NOTHING in the record that shows the Court stated that Fred could have next friend status. What the Court did was simply say that he would listen to any argument that was made by Fred. The Court was being polite to a Pro Se applicant.

The politeness of a Judge, per se, has never been deemed the equivalent of a Grant of Authority to assume a particular legal

status. In the absence of a court order granting Fred "next friend" status, Fred must accept the reality that he has NO next friend status.

As the Appellate Court of Illinois said in its decision:

> "Fred Bairstow is not the legal custodian of CHRISTOPHER, and has asserted no legal interest of his that might entitle him to sue for injunctive relief as to another's interest." (Page D-5 of Petition for Writ of Certiorari.)

II

FRED HAS NO STANDING
UNDER FEDERAL LAW

Fred cites the case of Allen v Wright, 104 S. Ct. 3315, 468 U. S. 737 (1984 in support of his claim that he has standing. Admittedly the opinion in that case is long, but Fred should have, at least, read the majority opinion, and if he had, he would have learned that in federal court as well he has NO standing.

At 104 S. Ct. 3324 Justice O'Connor discusses the doctrine of standing as set forth in Warth v Seldin, 422 U. S. at 498, 95 S. Ct. at 2204:

> "' In essence the question of standing is whether the litigant is entitled to have the Court decide the merits of the dispute or of particular issues...'".

Justice O'Connor continues:

> "Standing doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a complaint fall within the zone of interests protected by the law invoked....The requirement of standing, however, has a core competent derived directly from the Constitution. A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." (Underscoring supplied).

As can be seen, Fred, as uncle, has no concrete, personal interest in the medical program of the child that is recognized in law. His attempt to clothe h imself in his "love" for the child is a self-imposed concern without legal status.

Indeed, had he read Justice O'Connor's opinion carefully, he would have learned that under federal law he may not hide under the cloak of Christopher's constitutional rights and claim for Christopher that the child is being deprived of his constitutional rights.

See also Barrows v Jackson, 346 U. S. 249, 73 S. Ct. 1031 at page 1034 (1953):

> "Ordinarily one may not claim standing in this Court to vindicate the constitutional rights of some third party... The requirement of standing is often used to describe the constitutional limitation on the jurisdiction of this Court in "cases" and "controversies"... Apart from the jurisdictional requirement, this Court has

> developed a complementary rule of self-restraint for its own governance (not always clearly distinguished from the constitutional limitation) which ordinarily precludes a person from challenging the constitutionality of state action by invoking the rights of others... The common thread underlying both requirements is that a person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation."

The Court then goes on to explain why it did depart from its usual rule (at page 1036) because

> "this Court will not permit or require California to coerce respondent to respond in damages for failure to observe a restrictive covenant that this Court would deny California the right to enforce in equity, Shelley, supra; or that this Court would deny California the right to incorporate in a statute...."

In other words, under his contract the co-covenantor was obligated to pay his co-covenantors damages for selling to a non-Caucasian, and he would thus be paying damages for something which the United States Supreme

Court had declared a violation of the Constitution, i.e. discrimination on the basis of race in the sale of real property.

Fred is under no contract to perform something which is against public policy. Indeed he has inserted himself into a matter that is "none of his business" and in which he has no legal standing.

III

THERE ARE NO CONSTITUTIONAL QUESTIONS IN THIS CASE

Initially there were two cases. The first dealt with Fred's petition for an injunction. He was barred at the very outset of that case because he had no standing to bring the action. Once his petition was dismissed with prejudice no

answer could be filed and there could be no presentation or discussion of the merits of the case. Hence any constitutional objection that Fred may have raised collapsed at the very beginning of that suit.

Because Fred would <u>not</u> stop trying to influence the child to not obey his mother and the physician, it became necessary for the mother to obtain more immediate and forceful action to stop Fred's interference. CAROLYN sought the Order of Protection on the ground that Fred had no "standing" to interfere in her medical program for Christopher, even though he was an uncle. The Family Court agreed and a plenary Order of Protection was entered prohibiting Fred for a period of two years

> "from the following: harassment, interference with personal liberty, intimidation of a dependent, more particularly interference by Fred Bairstow with the medical program of Christopher." (C-38).

During the hearing Fred advised the Court he was fearful that he might be falsely accused of future harassment, interference with personal liberties and intimidation of a dependent. The Court then said:

> "To prevent the opportunity for future abuse or false accusations he (Fred) is ordered not to see the child at all during the pendency of the order." (C-47,48).

Thereupon the following paragraph was added to the Order of Protection:

> "that he cease, desist and refrain from any discussion of Christopher's health or medical program with anyone who is involved or connected in any activity of any nature with Christopher." (C-40).

As can be seen from the foregoing, Fred requested the Court to "protect" him against future accusations. The Judge gave him good advice: stay away from Christopher and his medicine. To assure Fred's staying away, the Court with Fred's consent, included the suggestion in the order.

Fred nonetheless continues and persists in mixing apples and oranges. Because the federal constitution gives him freedom of speech, Fred thinks he can interfere with a particular minor's medical program and can try to influence the child not to take the medicine. Fred refuses to understand that he may speak against drugs on a public forum but he may not, even under the Constitution, interfere in the medical program of the child when Fred has no legal interest in that matter. Allen v Wright, 103 S. Ct. 3315, supra.

IV

CAROLYN'S COSTS.

Carolyn has now been compelled by Fred's activities to incur legal expenses and attorney's fees to represent her in the following matters:

A.

Fred's Suit for an Injunction

1. Preliminary conference with her attorney after service of Petition for Injunction.

2. In Court on return date of original Petition for Injunction. Preliminary preparation by her attorney of Motion to Strike and Dismiss original Petition. Hearing on same in Court and Motion to Strike and Dismiss with prejudice granted.

3. Fred served Motion to file an Amended Petition for an Injunction, without leave of Court. Motion prepared in opposition. In Court to argue the matter and Amended Petition was stricken and dismissed by Court Order, on Carolyn's Motion.

4. Fred then served Motion to withdraw Amended Petition. In Court and opposition to same by Carolyn's attorney. Order granted denying Fred's Motion on ground there was no Amended Petition in the case.

5. Preparation by Carolyn's attorney of Petition for attorney's fees for foregoing services. Hearing in Court. Carolyn's Motion for fees denied.

6. Appeal by Fred to Second District Appellate Court of Illinois. Receipt of Fred's Brief. Preparation and filing of Carolyn's Answering Brief.

B.

Carolyn's Petition for an
Order of Protection

7. Preparation and filing of Petition for Order of Protection prepared by Carolyn's attorney. Emergency Order of Protection issued.

8. Hearing in Court. Issuance of Plenary Order of Protection.

9. Appeal by Fred to Second District Appellate Court. Receipt of Fred's Brief. Preparation and filing of Carolyn's Answering Brief.

10. Motion by Carolyn's attorney to consolidate the cases in the Appellate Court. Motion granted.

11. Appellate Court affirms both Circuit Court decisions.

12. Motion by Fred asking for a re-hearing by the Appellate Court. Motion denied.

13. Petition by Fred for Leave to Appeal to the Illinois Supreme Court. Answer prepared in opposition thereto by Carolyn's attorney and filed. Petition for Leave to Appeal denied.

14. Petition for Writ of Certiorari to the United States Supreme Court filed by Fred. Answer in opposition now being prepared by Carolyn's attorney.

The persistent pursuit by Fred to harass Carolyn and to cause her expense has known no bounds thus far. Carolyn has won at each stage of the litigation and at each stage she and she alone has had to foot her bills for legal services. There was one exception. The Circuit Court which issued the order of Protection awarded CArolyn's attorney the sum of $592.00 to cover attorney's fees and expenses to obtain the Order of Protection. Her bill for legal services has run into the thousands. CArolyn asks when will this harassment end?

Supreme Court Rule 42 provides as follows:

> "2. When a petition for a writ of certiorari...is frivolous, the Court may award the respondent or appellee just damages and single or double costs. Damages may be awarded against the petitioner..."

Carolyn does not desire to unduly lengthen this Answering Brief and therefore is not at this time submitting a detailed statement of her attorney's bill. If the Court sees fit to regard Fred's petition for a Writ of Certiorari as frivolous within the meaning of Rule 42, Carolyn will submit a detailed bill for the expenses and fees which she has incurred as a result of Fred's wilful intransigence.

V

THE FATHER OF CHRISTOPHER

The parents of Christopher are divorced. Both are living. Carolyn, the mother, has been awarded sole custody of the child in the divorce action.

Fred has stated on pages 4,8 and 9 of his Petition for a Writ of Certiorari that

the father opposed the giving of Ritalin to the child. Nowhere, at any time, to either Carolyn, her attorney or the Court, has the father appeared or stated that he opposed the giving of Ritalin to the child. The father has never appeared in the litigation, either as party or witness.

Fred, knowing that he has no standing in the litigation, has sought desperately some cover of legitimacy. There is none. He knows it. So he resorts to fiction.

VI.

TABLE OF AUTHORITIES CITED BY FRED AND THEIR RELEVANCE.

1. Allen v Wright, 104 S. Ct. 3315, 468 U.S. 737, 82 L. Ed. 2d 556. (1984).

This case is discussed at length on pp. 6, 7 and 8 of this Answering Brief. Had Fred

really read this case he would never have filed his Petition for a Writ of Certiorari.

2. Clark v Chicago Title and Trust Co, 393 Ill. 419, 66 N. E. 2d 378 (1946).

Here the person representing the minors was recognized as their "next friend" in the litigation. In the instant case Fred does not have that status.

3. Kriebiozen Research Foundation v Beacon Press, 334 Mass. 86, 134 N. E. 2d 1 (1956)

This case is totally irrelevant. Fred is not a newspaper and the case at bar is not a general discussion of the danger of drugs etc. The case Fred has filed refers to a specific individual in whose medical program Fred is interfering: a case in which he is desperately trying to find standing and the facts cannot provide him with standing.

4. Washington v Harper, _____ U. S. _____, 110 S. Ct. 1028, 108 L. Ed 2d 178 (1990).

The Court in this case held that a medical doctor must make the decision as to whether the drug was to be administered. Did Fred read this case? The case clearly tells him that he cannot as a non-medical man intervene on behalf of others to determine the administration of the drug. This case supports Carolyn's position.

CONCLUSION

Fred Bairstow refuses to understand the legal system, or if he does, he is deliberately abusing it. He has been informed by two Circuit Courts that he has no standing and thereno case. He has been informed by the Appellate Court of Illinois that he has no standing and therefore no case. He was denied a re-hearing by the Appellate Court.

He was denied leave to appeal to the Supreme Court of Illinois. He is now trying to get leave to appeal to the United States Supreme Court by filing a Writ of Certiorari.

He has been told and re-told that

> "a prospective party cannot gain standing merely through a self-proclaimed concern about an issue".

(See page D-5 of the Petition for Writ of Certiorari).

He nonetheless violates all rules of practice by discussing the merits of issues at every level, regardless of the rulings of the Court or the relevance of the issues.

Carolyn believes that nothing will stop Fred unless sanctions are imposed upon him, to make him understand that he cannot wilfully and irresponsibly continue to cause her

needless expense and that if he desires to do so, he must fully compensate her for such anguish and expense.

WHEREFORE Carolyn Bairstow prays the United States Supreme Court will:

1. Deny the petition for a Writ of Certiorari.

2. Affirm the opinion of the Illinois Appellate Court.

3. Impose damages and costs upon Fred Bairstow, and

4. End the charade which Fred has relentlessly pursued in his wilful exploitation of his vanity.

Respectfully Submitted,

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